

required for each establishment, of the U.S. affiliate, that engaged in the processing, packaging, or wholesale distribution of fish or seafoods.

[42 FR 64315, Dec. 22, 1977; 43 FR 2169, Jan. 16, 1978, as amended at 44 FR 32586, June 6, 1979; 46 FR 23226, Apr. 24, 1981; 46 FR 60191, Dec. 9, 1981; 47 FR 13139, Mar. 29, 1982; 47 FR 14138, Apr. 2, 1982; 49 FR 3174, Jan. 26, 1984; 53 FR 1016, Jan. 15, 1988; 63 FR 16892, Apr. 7, 1998; 68 FR 3813, Jan. 27, 2003; 68 FR 67940, Dec. 5, 2003]

**§ 806.16 Rules and regulations for BE-10, Benchmark Survey of U.S. Direct Investment Abroad—2004.**

A BE-10, Benchmark Survey of U.S. Direct Investment Abroad will be conducted covering 2004. All legal authorities, provisions, definitions, and requirements contained in § 806.1 through § 806.13 and § 806.14(a) through (d) are applicable to this survey. Specific additional rules and regulations for the BE-10 survey are given in paragraphs (a) through (e) of this section. More detailed instructions are given on the report forms and instructions.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE-10, Benchmark Survey of U.S. Direct Investment Abroad—2004, contained in this section, whether or not they are contacted by BEA. Also, a person, or their agent, that is contacted by BEA about reporting in this survey, either by sending them a report form or by written inquiry, must respond in writing pursuant to § 806.4. This may be accomplished by:

(1) Certifying in writing, by the due date of the survey, to the fact that the person had no direct investment within the purview of the reporting requirements of the BE-10 survey;

(2) Completing and returning the “BE-10 Claim for Not Filing” by the due date of the survey; or

(3) Filing the properly completed BE-10 report (comprising Form BE-10A or BE-10A BANK and Forms BE-10B(LF), BE-10B(SF), BE-10B Mini and/or BE-10B BANK) by May 31, 2005, or June 30, 2005, as required.

(b) *Who must report.* (1) A BE-10 report is required of any U.S. person that had a foreign affiliate—that is, that had direct or indirect ownership or control of at least 10 percent of the

voting stock of an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise—at any time during the U.S. person’s 2004 fiscal year.

(2) If the U.S. person had no foreign affiliates during its 2004 fiscal year, a “BE-10 Claim for Not Filing” must be filed by the due date of the survey; no other forms in the survey are required. If the U.S. person had any foreign affiliates during its 2004 fiscal year, a BE-10 report is required and the U.S. person is a U.S. Reporter in this survey.

(3) Reports are required even if the foreign business enterprise was established, acquired, seized, liquidated, sold, expropriated, or inactivated during the U.S. person’s 2004 fiscal year.

(4) The amount and type of data required to be reported vary according to the size of the U.S. Reporters or foreign affiliates, whether they are banks or nonbanks, and, for foreign affiliates, whether they are majority-owned or minority-owned by U.S. direct investors. For purposes of the BE-10 survey, a “majority-owned” foreign affiliate is one in which the combined direct and indirect ownership interest of all U.S. parents of the foreign affiliate exceeds 50 percent; all other affiliates are referred to as “minority-owned” affiliates. In addition, a “bank” is a business entity engaged in deposit banking or closely related functions, including commercial banks, Edge Act corporations, foreign branches and agencies of U.S. banks whether or not they accept deposits abroad, savings and loans, savings banks, bank holding companies, and financial holding companies. Elsewhere in this section, when “bank” is used, it refers to all such organizations.

(c) *Forms for nonbank U.S. Reporters and foreign affiliates—*(1) *Form BE-10A (Report for nonbank U.S. Reporter).* A BE-10A report must be completed by a U.S. Reporter that is not a bank. If the U.S. Reporter is a corporation, Form BE-10A is required to cover the fully consolidated U.S. domestic business enterprise. However, where a U.S. Reporter’s primary line of business is not in banking (or related financial activities), but the Reporter also has ownership in a bank, the bank, including all

of its domestic subsidiaries or units, must file on the BE-10A BANK form and the nonbanking U.S. operations not owned by the bank must file on the BE-10A.

(i) If for a nonbank U.S. Reporter any one of the following three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—was greater than \$150 million (positive or negative) at any time during the Reporter's 2004 fiscal year, the U.S. Reporter must file a complete Form BE-10A and, as applicable, a BE-10A SUPPLEMENT A listing each, if any, foreign affiliate that is exempt from being reported on Form BE-10B(LF), BE-10B(SF), BE-10B Mini, or BE-10B BANK. It must also file a Form BE-10B(LF), BE-10B(SF), BE-10B Mini, or BE-10B BANK, as appropriate, for each nonexempt foreign affiliate.

(ii) If for a nonbank U.S. Reporter none of the three items listed in paragraph (c)(1)(i) of this section was greater than \$150 million (positive or negative) at any time during the Reporter's 2004 fiscal year, the U.S. Reporter is required to file on Form BE-10A only certain items as designated on the form and, as applicable, a BE-10A SUPPLEMENT A listing each, if any, foreign affiliate that is exempt from being reported on Form BE-10B(LF), BE-10B(SF), BE-10B Mini, or BE-10B BANK. It must also file a Form BE-10B(LF), BE-10B(SF), BE-10B Mini, or BE-10B BANK, as appropriate, for each nonexempt foreign affiliate.

(2) *Form BE-10B(LF), (SF), or Mini (Report for nonbank foreign affiliate).* (i) A BE-10B(LF) (Long Form) must be filed for each majority-owned nonbank foreign affiliate of a nonbank U.S. Reporter, whether held directly or indirectly, for which any one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than \$150 million (positive or negative) at any time during the affiliate's 2004 fiscal year.

(ii) A BE-10B(SF) (Short Form) must be filed:

(A) For each majority-owned nonbank foreign affiliate of a nonbank U.S. Reporter, whether held directly or

indirectly, for which any one of the three items listed in paragraph (c)(2)(i) of this section was greater than \$25 million but for which none of these items was greater than \$150 million (positive or negative), at any time during the affiliate's 2004 fiscal year, and

(B) For each minority-owned nonbank foreign affiliate of a nonbank U.S. Reporter, whether held directly or indirectly, for which any one of the three items listed in paragraph (c)(2)(i) of this section was greater than \$25 million (positive or negative), at any time during the affiliate's 2004 fiscal year, and

(C) For each nonbank foreign affiliate of a U.S. bank Reporter, whether held directly or indirectly, for which any one of the three items listed in paragraph (c)(2)(i) of this section was greater than \$25 million (positive or negative), at any time during the affiliate's 2004 fiscal year.

(iii) A BE-10B Mini must be filed for each nonbank foreign affiliate, whether held directly or indirectly, for which any one of the three items listed in paragraph (c)(2)(i) of this section was greater than \$10 million but for which none of these items was greater than \$25 million (positive or negative), at any time during the affiliate's 2004 fiscal year.

(iv) Notwithstanding paragraphs (c)(2)(i), (c)(2)(ii), and (c)(2)(iii) of this section, a Form BE-10B(LF), (SF), or Mini must be filed for a foreign affiliate of the U.S. Reporter that owns another nonexempt foreign affiliate of that U.S. Reporter, even if the foreign affiliate parent is otherwise exempt, *i.e.*, a Form BE-10B(LF), (SF), Mini, or BANK must be filed for all affiliates upward in a chain of ownership.

(d) *Forms for U.S. Reporters and foreign affiliates that are banks, bank holding companies, or financial holding companies—(1) Form BE-10A BANK (Report for a U.S. Reporter that is a bank).* A BE-10A BANK report must be completed by a U.S. Reporter that is a bank. For purposes of filing Form BE-10A BANK, the U.S. Reporter is deemed to be the fully consolidated U.S. domestic business enterprise and all required data on the form shall be for the fully consolidated domestic entity.

(i) If a U.S. bank had any foreign affiliates at any time during its 2004 fiscal year, whether a bank or nonbank and whether held directly or indirectly, for which any one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than \$10 million (positive or negative) at any time during the affiliate's 2004 fiscal year, the U.S. Reporter must file a Form BE-10A BANK and, as applicable, a BE-10A BANK SUPPLEMENT A listing each, if any, foreign affiliate, whether bank or nonbank, that is exempt from being reported on Form BE-10B(SF), BE-10B Mini, or BE-10B BANK. It must also file a Form BE-10B(SF) or BE-10B Mini for each nonexempt nonbank foreign affiliate and a Form BE-10B BANK for each nonexempt bank foreign affiliate.

(ii) If the U.S. bank Reporter had no foreign affiliates for which any one of the three items listed in paragraph (d)(2)(i) of this section was greater than \$10 million (positive or negative) at any time during the affiliate's 2004 fiscal year, the U.S. Reporter must file a Form BE-10A BANK and a BE-10A BANK SUPPLEMENT A, listing all foreign affiliates exempt from being reported on Form BE-10B(SF), BE-10B Mini, or BE-10B BANK.

(2) *Form BE-10B BANK (Report for a foreign affiliate that is a bank).* (i) A BE-10B BANK report must be filed for each foreign bank affiliate of a bank or nonbank U.S. Reporter, whether directly or indirectly held, for which any one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than \$10 million (positive or negative) at any time during the affiliate's 2004 fiscal year.

(ii) Notwithstanding paragraph (d)(3)(i) of this section, a Form BE-10B BANK must be filed for a foreign bank affiliate of the U.S. Reporter that owns another nonexempt foreign affiliate of that U.S. Reporter, even if the foreign affiliate parent is otherwise exempt, *i.e.*, a Form BE-10B(LF), (SF), Mini, or BANK must be filed for all affiliates upward in a chain of ownership. However, a Form BE-10B BANK is not required to be filed for a foreign bank af-

filiate in which the U.S. Reporter holds only an indirect ownership interest of 50 percent or less and that does not own a reportable nonbank foreign affiliate, but the indirectly owned bank affiliate must be listed on the BE-10A BANK SUPPLEMENT A.

(e) *Due date.* A fully completed and certified BE-10 report comprising Form BE-10A or 10A BANK and Form(s) BE-10B(LF), (SF), Mini, or BANK (as required) is due to be filed with BEA not later than May 31, 2005 for those U.S. Reporters filing fewer than 50, and June 30, 2005 for those U.S. Reporters filing 50 or more, Forms BE-10B(LF), (SF), Mini, or BANK.

[69 FR 70545, Dec. 7, 2004]

**§ 806.17 Rules and regulations for BE-12, Benchmark Survey of Foreign Direct Investment in the United States—2002**

A BE-12, Benchmark Survey of Foreign Direct Investment in the United States will be conducted covering 2002. All legal authorities, provisions, definitions, and requirements contained in §§ 806.1 through 806.13 and § 806.15(a) through (g) are applicable to this survey. Specific additional rules and regulations for the BE-12 survey are given in this section.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE-12, Benchmark Survey of Foreign Direct Investment in the United States—2002, contained in this section, whether or not they are contacted by BEA. Also, a person, or their agent, contacted by BEA concerning their being subject to reporting, either by sending them a report form or by written inquiry, must respond in writing pursuant to § 806.4, or electronically using BEA's Automated Survey Transmission and Retrieval (ASTAR) system. This may be accomplished by completing and returning either Form BE-12(X) within 30 days of the date it was received, if Form BE-12(LF), Form BE-12(SF), or Form BE-12 Bank do not apply, or by completing and returning Form BE-12(LF), Form BE-12(SF), or Form BE-12 Bank, whichever is applicable, by May 31, 2003.

(b) *Who must report.* A BE-12 report is required for each U.S. affiliate, *i.e.*, for